

Court Investigator's Training Case Study Mock Investigation

CASE INFORMATION

- I. On August 28, Adult Protective Services filed a Petition to have the Public Fiduciary appointed as Guardian and Conservator for Mr. John Smith. You were appointed as the Court Investigator by the Honorable Judicial Officer on that same day and a hearing on this matter has been set for September 15th.
- II. The Petition provides the following information, pending substantiation and further discovery by this investigator:

Mr. Smith is a 68 year old man who lives alone in a single wide trailer on an acre of land in Sunshine Valley, Arizona. He has 2 adult children. John Jr. lives in New York, Bob lives in Colorado. Another interested party in this matter is Terri Jones. Ms. Jones is listed as a family friend. Mr. Smith is a SSA recipient of \$840.00 per month and receives a small civil service pension in the amount of \$190.00. The Petition states assets consist of 40 acres of vacant land, a truck and bank account with \$10,000.00.

- III. Initial Investigation has resulted in the following information:
 - Mr. Smith lives near his recently deceased domestic partner's daughter Terri in Sunshine Valley, Arizona.
 - Terri has been in daily contact with Mr. Smith since her mother died one year ago. Terri has provided proof of her appointment as Mr. Smith's agent in a Financial Durable Power of Attorney and Medical Power of Attorney.
 - Another neighbor, Wanda, takes Mr. Smith grocery shopping, banking on the first of the month and Mr. Smith pays for her water and LP delivery. They spend a good deal of time together at the local casinos the first two weeks of the month.

- The adult children, John and Bob's mother Mary is still alive; and Mr. John and Mrs. Mary Smith were never divorced.
- A check on the County's Assessor's Page (Personal Property Tax Site) demonstrates Mr. Smith owns his mobile home.
- The mobile home is not affixed to the land; it is titled in the deceased domestic partner, Ellen's name.
- Verification with the bank demonstrates Mr. Smith's monthly income is direct deposited to his checking account. He has a savings account with \$10,000, which is what is left of Ellen's life insurance proceeds of \$75,000.
- Verification with MVD (or Search data base) demonstrates the truck referenced in the Petition is also titled in Ellen's name.
- The 40 acres of vacant land is titled in John and Mary Smith's names JTROS and has an Assessor's value of \$250,000.00 in Clark County, Utah.
- Mr. Smith's favorite past-time includes drinking a daily 12 pack of beer, with Wanda.
- He receives a week's worth of frozen Meals-on-Wheels delivered every Tuesday.
- The Meals-on-Wheels driver noticed that Mr. Smith seemed to be getting forgetful, disoriented, and smelly, and his supervisor notified Adult Protective Services. APS determined that his electricity wasn't working. It is May and starting to get hot. His only food is canned goods. APS determined there was no immediate emergency.
- Mr. Smith denies having a doctor and taking any prescription medication.

CASE SCENARIO QUESTIONS

1. Due Diligence Issues Guardianship:

- a. Is Mr. Smith incapacitated by legal definition? (Clear and Convincing Evidence that the Captioned Adult is impaired to the extent that he or she lacks capacity to make responsible decisions about his/her person).
- b. If so, is there a “Demonstrated Need? (Appointment is necessary to provide for the demonstrated need.)
- c. If so, can Mr. Smith’s needs be met by a less restrictive means, including the use of appropriate technological assistance?
- d. If not, can that need be met by a Limited Guardianship appointment?
- e. If so, what should the limitations on the authorities granted to the guardian be?

2. Due Diligence Issues Conservatorship:

- a. Does Mr. Smith have an Estate?
- b. Does Mr. Smith meet the legal definition by clear and convincing evidence demonstrating protection of assets may be warranted?
 - i. (The person is unable to manage the person’s estate and affairs effectively for reasons such as mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance.
 - ii. (Does the person have property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support care and welfare of the person or those entitled to be supported by the person and that protection is necessary or desirable to obtain or provide funds?)
- c. Do any of Mr. Smith’s assets fall under another legal doctrine, exempting them from conservatorship jurisdiction?
- d. Do any of Mr. Smith’s assets fall under another judicial jurisdiction (venue)?
- e. Does Mr. Smith have advanced directives or estate plan documents?
- f. Is Mr. Smith’s Estate at risk of loss or waste?
- g. If so, what asset(s) are in need of protection?
- h. Does Mr. Smith have any dependents?

3. Priority for Appointment:

- a. Who does Mr. Smith state he wants to serve if a Guardian or Conservator is recommended by this investigator?
- b. If that person is different than the Petitioner, then on what basis does this person have priority for consideration?
- c. Is Mr. Smith a Veteran?

4. Inaccuracies in Petition:

Do the inaccuracies in the medical or financial part of the report impact the credibility of the Petition and what course of action, if any should the Investigator take to?